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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,706	01/08/2004	Tomoko Takehara	58647-176	8946

7590 10/11/2006  
McDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER
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NGUYEN, HUONG Q

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/752,706

Applicant(s)

TAKEHARA, TOMOKO

Examiner

Helen Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) Claims 1-12, 14, 16, 18, 20, and 22-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) Claims 1-12, 14, 16, 18, 20, and 22-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office Action is responsive to the amendment filed 7/19/2006. Claim 1 has been amended overcoming the previous claim objection. Claims 13, 15, 17, 19, and 21 have been cancelled. **Claims 1-12, 14, 16, 18, 20, and 22-41** remain pending.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-12, 14, 16, 18, 20, and 22-41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodama et al (US Pat No. 6402699).

4. In regards to **Claim 1**, Kodama et al disclose a female physical condition management apparatus comprising:

physical condition data acquiring means, referred to as "data input device" (41) and "electrodes" (21-22, 51-52, 55);

appearance time estimation means, referred to as "CPU" (45) (Col.6, line 56-58);

estimation accuracy determination means, referred to as "decision making unit" (Col.2, line 56-60);

display means (42) (Col.6, line 50-52);

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wherein the physical condition data acquiring means acquires data about physical conditions of a female, which appear in a monthly cycle including a menstruation start date (Col.6, line 34-35);

the appearance time estimation means estimates the oncoming times of appearance of the physical conditions appearing in a monthly cycle of the female based on the acquired data about the physical conditions (Col.6, line 56-58);

and the display means displays data about the estimated times of appearance (Col.6, line 50-52) and data about the determined estimation accuracy (i.e. historical record) (Col.2, line 25-27).

5. However, Kodama et al do not expressly disclose the estimation accuracy determination means for determining the accuracy of the estimations made by the appearance time estimation means based on the number of times the menstruation date has been input. However, Kodama et al do disclose that decisions made about the physical conditions of the female are based on menstrual data inputted, such as menstruation start date, which is also stored in memory (Col.6, line 56-60; Col.7 line 13-14, 36-44; Col.8 line 14-15, 22-23). Kodama et al also disclose said estimation accuracy determination means used for a comparison between present data and historical record (Col.2, line 56-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the estimation accuracy determination means of Kodama et al such that a determination of accuracy of the estimations made by the appearance time estimation means is made, as such determination is within the scope of comparisons performed between present and historical data, and to determine such accuracy from the number of times the menstruation start date has been inputted, whose

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consideration as already used by Kodama et al indicates a valuable factor to take into account, for an improved device that supplies additional information to the female as well as indicates the accuracy of information derived from such device.

6. In regards to **Claim 2**, Kodama et al disclose the estimation accuracy determination means determines the accuracy of the estimations made by the appearance time estimation means based on the number of times the data about the physical conditions appearing in a monthly cycle of the female has been acquired by the physical condition data acquiring means in the past. Specifically, Kodama et al disclose making a decision by comparing present data with historical record, wherein the nature of such comparison allows for accuracy determination based upon the number of times data has been acquired in the past, as described above (Col.2, line 56-60).

7. In regards to **Claim 3**, Kodama et al disclose the display means for displaying information from said estimation accuracy determination means (Col.6, line 50-52), wherein said estimation accuracy determination means determines the accuracy, i.e. a probability that the physical conditions appearing in a monthly cycle of the female actually appear at the estimated times of appearance, as explained above. Therefore, it would have been obvious for said display means to also display such information, as well as all other information acquired by said estimation accuracy determination means.

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8. In regard to **Claims 4-5**, Kodama et al disclose the physical condition data acquiring means as used by the female to input the data about the physical conditions appearing in a monthly cycle (Col.6, line 34-35).
9. In regard to **Claims 6-7**, Kodama et al disclose the physical condition data acquiring means measures physical data, i.e. impedance (Col.6, line 25-28) of the female and acquires the data about the physical conditions appearing in a monthly cycle of the female based on the measured physical data (Col.5, line 20-34), best seen in Figure 2.
10. In regard to **Claims 8-9**, Kodama et al disclose the physical data of the female as the basal body temperature of the female (Col.8, line 35-45).
11. In regard to **Claims 10-11**, Kodama et al disclose the physical data of the female as the bioelectric impedance of the female (Col.7, line 16-30).
12. In regard to **Claims 12, 14, 16, 18, and 20**, Kodama et al disclose the data about the physical conditions appearing in a monthly cycle of the female, which is acquired by the physical condition data acquiring means, is the start date of menstruation of the female (Col.6, line 34).
13. In regard to **Claims 22-31**, Kodama et al disclose the data about the physical conditions appearing in a monthly cycle of the female, which is acquired by the physical condition data acquiring means, is the ovulation date of the female, wherein Kodama et al

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disclose inputting the start and ending states of menstruation, wherein said ovulation date is directly related to the start and ending date of menstruation, thus an input of said start and ending menstruation dates constitutes an ovulation date (Col.6, line 34-35).

14. In regard to **Claims 32-41**, Kodama et al disclose the data about the physical conditions appearing in a monthly cycle of the female, which is acquired by the physical condition data acquiring means, is the number of days in the monthly cycle of the female (Col.7, line 13-14).

#### ***Response to Arguments***

15. Applicant's arguments with respect to **Claims 1-12, 14, 16, 18, 20, and 22-41** have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


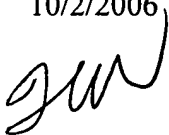
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is 571-272-8340.

The examiner can normally be reached on Monday - Friday, 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HQN  
10/2/2006



MAX F. HINDENBURG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700